

Voting

A. GENERALLY

§ 1. Introduction

The legislative power vested in the Congress by Article I of the Constitution⁽¹⁾ is implemented by the Members of the House and Senate by the act of voting. There are various ways in which votes are cast: the Constitution specifies that the “yeas and nays” shall be taken on any issue if desired by one-fifth of the Members of either House who are present when a question is put.⁽²⁾ When the yeas and nays are ordered, the names of all Members responding to the vote are recorded in the Journal of the House or Senate, as the case may be.

The yeas and nays are in the modern House taken by electronic means, each Member inserting his own coded card into one of the voting stations installed in the Chamber. They were formerly taken by a call of the roll, Members names being called by the Clerk, alphabetically. This system is still utilized on occasion when the electronic system is inoperable

and can be specified as the method to be used on a particular vote by the Speaker, who is given the discretion to choose the voting method by a House rule.⁽³⁾

The roll is in special circumstances called “by states”: on opening day of a new Congress, for example, a House rule requires the Clerk to call the roll in this fashion to determine the presence of a quorum.⁽⁴⁾ Under the 12th amendment, if the House were called upon to choose a President, votes would be cast by states. Proposals to govern the conduct of this vote have been introduced.⁽⁵⁾

Obviously, while critical questions usually do become the subject of votes of record, not every vote is taken by the constitutional method: many issues are decided

1. U.S. Const. art. I § 1.

2. *Id.* at § 5, clause 3.

3. Rule XV clause 5(a), *House Rules and Manual* § 774b (1995).

4. Rule III clause 1 directs the Clerk to “call the roll of Members by States in alphabetical order.” Since the advent of electronic voting, this quorum call is normally, by unanimous consent, conducted by the electronic device. See, e.g., 139 CONG. REC. 45, 103d Cong. 1st Sess., Jan. 5, 1993.

5. See § 1.1, *infra*.

by unanimous consent or by other methods of voting prescribed by the rules adopted in each body. In the House of Representatives, a vast amount of the business, from procedural motions to amendments to the third reading and passage of bills, is disposed of by unanimous-consent requests. The Speaker or the Chairman of the Committee of the Whole routinely entertain requests for legislative action phrased as unanimous-consent requests which are finalized “without objection.” For example, unanimous consent may be asked to “consider” a measure, in which case a vote may be demanded later when the appropriate motion for disposition of the matter is made. More frequently, the request may be to “pass” a bill, “agree” to a resolution, or “concur” in a Senate amendment. These requests may accomplish the legislative result without a vote, since the failure of any Member to object results in the adoption of the matter which is the subject of the request.⁽⁶⁾

6. An example of this principle: a unanimous-consent request to concur in a Senate amendment to a House bill on the Speaker’s table with an amendment is not subject to a vote, the failure of any Member to object resulting in the automatic adoption of the proposed Senate amendment with the stated modification. See § 1.2, *infra*.

One of the foundations of parliamentary procedure in the House is that the Presiding Officer, the Speaker or the Chairman of the Committee of the Whole, or Members appointed to preside “pro tempore,” will be impartial in conducting votes. Whether taken by voice, by division, or by one of the various forms of taking a roll call, the Chair’s call of the result and his utilization of the voting mechanism must be even-handed and carried out without partisanship. When there is a perception that the Chair has deviated from these standards, Members may take great offense.⁽⁷⁾

This chapter explains how the Members cast their many votes, including those constitutionally mandated,⁽⁸⁾ as well as those prescribed⁽⁹⁾ or permitted by House

7. See § 31.18, *infra*.

8. The only type of vote which is constitutionally mandated is the yeas and nays vote. U.S. Const. art. I § 5. The vote on sustaining or overriding a Presidential veto must be taken by the yeas and nays. *Id.* at § 7.

9. The House rules mandate a yeas and nays vote where a quorum is not present, an objection to a vote is made for that reason, and the House does not choose to adjourn. See Rule XV clauses 4 and 6, *House Rules and Manual* § 773 (1995). See also § 1.3, *infra*, for an example of a statutory requirement for a yeas and nays vote. A provision of law enacted as an ex-

rules.⁽¹⁰⁾ It describes the procedures used in taking a vote by voice, division, tellers with clerks, and the yeas and nays as well as the proper parliamentary foundation which must be laid to demand a particular type of vote.⁽¹¹⁾ The chapter also addresses the priorities or precedence of certain votes,⁽¹²⁾ the finality of a vote once

ercise of rulemaking authority can mandate the taking of a vote in a prescribed manner.

10. Voice votes, division votes, and recorded votes are permitted under the rules: see Rule I clause 5, *House Rules and Manual* §630 (1995). Teller votes, where Members filed up the center aisle of the Chamber between Members appointed to “tell” the vote, were dropped from Rule I in the 103d Congress. Tellers with clerks, a method of taking a recorded vote by depositing red, green, or orange preference cards with employees of the Clerk, remains as a method of voting but is normally not utilized since the installation of the electronic voting system.
11. For example, demands for recorded votes and the yeas and nays require “support” before the votes will be ordered. See §§23.1, 34.1, *infra*.
12. A demand for the yeas and nays took precedence over a demand for tellers, for example. See §24.1, *infra*. And yet, the former demand cannot interrupt a vote by division which is in progress; see §10.3, *infra*.
13. A vote once given cannot be changed. However, a vote incorrectly recorded, as on a roll call where the Clerk hears the response incorrectly, may be corrected if the error in recording the vote is demonstrably clear. See §6; §§31.16 and 38.1, *infra*.
14. When votes were taken by a call of the roll, the possibilities for error in recording a Member’s vote were manifest. Close votes were sometimes “recapitulated” to insure accuracy. See §27, *infra*. The procedure is rarely used today, since the purpose of this procedure is to guard against error on a close roll call determination by allowing and encouraging Members to check whether they are properly recorded. *Id.* On electronic votes Members can see how they are recorded without repeating the process.
15. Rule VIII, Duties of the Members, specifies that “[e]very Member shall be present within the Hall of the House during its sittings . . . and shall vote on each question put, unless he has a direct personal or pecuniary interest in the event of such question.” *House Rules and Manual* §656 (1995). It should be noted that since the advent of electronic voting and the practice of permitting recorded votes in a Committee of the Whole (a practice begun in 1974), the frequency of yea and nay votes, recorded votes, and quorum calls has increased. Few Members can claim

questions concerning the sanctity of the vote and new rules addressing the problem of “ghost” voting in the House⁽¹⁶⁾ and the Speaker’s authority to schedule the timing of taking a vote. Since the advent of electronic voting,⁽¹⁷⁾ various new procedures have been put in place to allow the Speaker to postpone votes to a scheduled time and to certain voting times when votes occur “back to back” without intervening business.⁽¹⁸⁾ The chapter also addresses the topic of dividing the question for separate votes where more than one topic or proposition is inherent in the question.⁽¹⁹⁾

to have responded to every such vote. On May 3, 1978, both the Speaker and the Minority Leader commented on the unbroken record of Rep. Bill Natcher (Ky.) who on that date cast his 10,000th vote without missing a quorum call or roll call in his 24 years in the House. 124 CONG. REC. 12473, 95th Cong. 2d Sess. Because of illness, Rep. Natcher failed to respond to a roll call on Mar. 3, 1994. His final unbroken string of consecutive votes totaled 18,401. 140 CONG. REC. p. _____, 103d Cong. 2d Sess., Mar. 3, 1994.

16. Rule VIII clause 3, *House Rules and Manual* § 660(b) (1995).
17. Rule I clause 5(a), *House Rules and Manual* § 630 (1995).
18. Rule I clause 5(b), *House Rules and Manual* § 631 (1995).
19. Rule XVI clause 6, provides that a “question shall be divided if it in-

Most issues that come before the House are decided by a majority vote, a concept which normally implies one-half plus one of the number voting.⁽²⁰⁾ In a strict sense, of course, the majority for legislative action is a majority of those voting, a quorum being present.⁽¹⁾ Occasionally, a law having the status of a House rule will specify that the majority necessary to a legislative action is measured against the authorized membership of the House.⁽²⁾ There are exceptions where a super ma-

cludes propositions so distinct in substance that one being taken away a substantive proposition shall remain . . .”. *House Rules and Manual* § 791 (1995).

20. Jefferson’s Manual states: “. . . The voice of the majority decides; for the lex majoris partis is the law of councils, elections, etc., where not otherwise expressly provided.” *House Rules and Manual* § 508 (1995).
1. Rule XV clause 3 specifies the necessity of a quorum for a challenged vote: “On the demand of any Member, or at the suggestion of the Speaker, the names of Members sufficient to make a quorum in the Hall of the House who do not vote shall be noted by the Clerk and recorded in the Journal, and reported to the Speaker with the names of the Members voting, and be counted and announced in determining the presence of a quorum to do business.” *House Rules and Manual* § 772 (1995).
2. See § 8.2, *infra*.

majority is required. Most obvious is the vote on reconsideration of a bill following a Presidential veto, where the Constitution specifies that a two-thirds vote is required for passage over the veto.⁽³⁾ Amendments to the Constitution also require the support of two-thirds for passage⁽⁴⁾ as does the vote on expulsion of a Member.⁽⁵⁾ In the 14th amendment, there is the little-noticed and largely obsolete requirement of a two-thirds vote to remove a political disability;⁽⁶⁾ and in the 25th amendment, a similar vote is required to determine that the President is disabled and unable to carry out the responsibilities of his office.⁽⁷⁾

In the parliamentary history of the House, certain rules have required a two-thirds vote for a variety of decisions. The rule providing for motions to suspend the rules, a special procedure now permitted on certain days of each week to expedite consideration of measures, has its origins in a rule

first adopted in 1822.⁽⁸⁾ Other motions to disturb the established order of business also require two-thirds for adoption: to dispense with Calendar Wednesday⁽⁹⁾ or the call of the Private Calendar,⁽¹⁰⁾ to call up a special order on the same day reported from the Committee on Rules.⁽¹¹⁾ More recently, in the 104th Congress, the House adopted a new rule requiring a three-fifths vote for passage of a measure containing an income tax rate increase⁽¹²⁾ and put in place a Corrections Calendar (to replace the Consent Calendar) which specifies that a bill considered under this new procedure requires the approval of three-fifths of the Members voting, a quorum being present, for passage.⁽¹³⁾

The rules of the House do not specifically prescribe rules for vot-

3. U.S. Const. art. I §7. For an interesting precedent involving a House determination as to the vote-majority or two-thirds-required to extend the time for state ratification of a constitutional amendment, see §1.5, *infra*.
4. *Id.* at art. IV.
5. *Id.* at art. I, §5.
6. *Id.* at §3.
7. *Id.* at §4.

8. The development of the motion to suspend the rules is discussed in the annotation following Rule XXVII clause 1, *House Rules and Manual* §902 (1995).
9. Rule XXIV clause 7, *House Rules and Manual* §897 (1995).
10. Rule XXIV clause 6, *House Rules and Manual* §893 (1995).
11. Rule XI clause 4(b), *House Rules and Manual* §729a (1995).
12. Rule XXI clause 5(c), *House Rules and Manual* §846c (1995).
13. Rule XIII clause 4(c), *House Rules and Manual* §746 (1995).

ing in its committees. However, since House rules are made applicable to its committees by the current Rule XI clause 1,⁽¹⁴⁾ so far as applicable, it has been accepted practice to consider that the constitutional requirement⁽¹⁵⁾ is applicable therein and to permit the yeas and nays to be ordered by one-fifth of those present. Indeed, the right to demand the yeas and nays in committee was well-established in the 19th century.⁽¹⁶⁾

In the modern House, since the Legislative Reorganization Act of 1970, committees have been required to adopt written rules and to publish them in the *Congressional Record*.⁽¹⁷⁾ An examination of those rules⁽¹⁸⁾ show that committees differ as to how a roll call vote is ordered: in some, one Member can demand a roll call; in others, one-fifth of those present; in still others, one-fifth of a quorum. Some committee rules are silent, implicitly following the

general rule described above. As in the House, many issues are decided by unanimous consent, by division, or voice votes. A bill can be ordered reported to the House by a non-record vote, a quorum being present;⁽¹⁹⁾ but since the adoption of the Legislative Reorganization Act of 1970, the House rules now require a record of all roll call votes to be available for public inspection⁽²⁰⁾ and also mandate that “with respect to each roll call vote on a motion to report any measure or matter of a public character, and on any amendment offered to the measure or matter, the total number of votes cast for and against, and the names of those Members voting for and against, shall be included in the committee report on the measure or matter.”⁽¹⁾

Voting by States; Election of President by House

§ 1.1 A Member announced his introduction of a resolution amending the rules of the House to provide for open recorded votes within each

14. *House Rules and Manual* §703 (1995).

15. Article I Section 5, *House Rules and Manual* §75 (1995).

16. 4 Hinds' Precedents §1472.

17. Rule XI clause 2(a), *House Rules and Manual* §704 (1995).

18. See “Rules Adopted by the Committees of the House of Representatives,” compiled by the Committee on Rules and republished each Congress.

19. Rule XI clause 2(l)(2)(A), *House Rules and Manual* §713c (1995).

20. Rule XI clause 2(e), *House Rules and Manual* §706a (1995).

1. Rule XI clause 2(l)(2)(B), *House Rules and Manual* §713d (1995).

state delegation when choosing a President under the 12th amendment to the Constitution.

On May 28, 1992,⁽²⁾ Mr. F. James Sensenbrenner, Jr., of Wisconsin, took a special order to address his concerns regarding the process of “voting by states” under the 12th amendment.⁽³⁾

MR. SENSENBRENNER: Madam Speaker, the time has come for the House of Representatives to seriously consider adopting procedures should the selection of the next President of the United States fall to the House of Representatives under the 12th amendment to the U.S. Constitution.

Today, I have introduced a resolution amending the permanent rules of the House of Representatives to open up the process for the election of a President should the House be called upon to do this duty. The resolution that I have introduced is rather straightforward. It adopts a new rule 54 of the Rules of the House, entitled “Procedures for Choosing a President,” and it says:

Whenever the right of choice shall devolve upon the House, any vote of

a Member from a state in determining the vote of that state to choose a President shall be recorded by the Clerk in open session.

The last time the House of Representatives had to select a President was in 1825 following the failure of all four candidates to obtain a majority in the Electoral College in the Presidential election of 1824. In looking at the precedents that were established in the 1825 election of the President, it is clear that two things happened.

First, the House met in closed session with everybody except House Members, stenographers, officers of the House, and Senators being excluded; and second, the votes cast in each State delegation were done in secret, so not only did the public not know how every Representative voted in the selection of the President, but they did not know how each State’s vote was cast.

At the end of the process, the Speaker of the House just announced which candidates had how many States’ votes and declared John Quincy Adams elected President of the United States.

Obviously, this secrecy will not do should the new House of Representatives be called upon to select a President beginning January 6, 1993, due to the failure of the three Presidential candidates to achieve a majority in the Electoral College.

It is incumbent upon this House of Representatives to set up the ground rules now before anybody can accuse the House of trying to engineer those rules to favor one candidate or the other, so that the most important vote that is cast by those Representatives who are elected on November 3, that is

2. 138 CONG. REC. 12855, 102d Cong. 2d Sess.

3. See 3 Hinds’ Precedents, Chapter LXII, “Election and Inauguration of President,” §1981 for the constitutional provision, Article XII; §§1982, 1983 for rules adopted by the House in 1801, when Jefferson was chosen; §1984, 1985 when President John Quincy Adams was chosen by the House in 1825.

the election of the President of the United States, will be open to the public and on the record.

My resolution proposes to do that. It opens up the process so that Members of the House can be accountable on how they cast this very important vote should the House be called upon under the 12th amendment to perform this very important function.

Mr. Sensenbrenner's resolution (H. Res. 472) was referred to the Committee on House Administration but was not reported to the House.

§ 1.2 A unanimous-consent request to concur in Senate amendments to a House bill on the Speaker's table with amendments is not subject to a vote, the failure of any Member to object resulting in the automatic adoption of the proposed amendments.

On July 2, 1980,⁽⁴⁾ the Chairman of the Committee on Science and Technology, Mr. Don Fuqua, of Florida, asked to take a House bill (H.R. 7474) with Senate amendments thereto, from the Speaker's table:

Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 7474), providing for a research, development, and demonstration program to achieve early tech-

nology applications for ocean thermal energy conversion systems, with Senate amendments thereto, concur in the Senate amendment to the title, and concur in the Senate amendment to the text with an amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Strike out all after the enacting clause and insert:

That this Act may be cited as the "Ocean Thermal Energy Conversion Research, Development, and Demonstration Act". . . .

The Clerk read the House amendment to the text of the Senate amendment, as follows:

Strike out section 10 on page 13, line 19 through page 14, line 12 of the engrossed Senate amendment and insert in lieu thereof the following: . . .

THE SPEAKER PRO TEMPORE:⁽⁵⁾ Is there objection to the initial request of the gentleman from Florida?

There was no objection.

A motion to reconsider was laid on the table.

PARLIAMENTARY INQUIRY

MR. [TOM] LOEFFLER of Texas: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER PRO TEMPORE: The gentleman will state his parliamentary inquiry.

MR. LOEFFLER: Mr. Speaker, is it in order to ask for a vote at this time? It is hard to hear.

THE SPEAKER PRO TEMPORE: This was just a unanimous-consent request

4. 126 CONG. REC. 18273, 18275, 96th Cong. 2d Sess.

5. Melvin Price (Ill.).

to amend the Senate amendment and there is no vote on that request.

§ 1.3 The Legislative Reorganization Act of 1970 (2 USC 198) requires that the concurrent resolution providing for the August recess in odd-numbered years be adopted by roll call vote in each House.

Section 132(a) of the Legislative Reorganization Act of 1970 provides as follows:

Unless otherwise provided by the Congress, the two Houses shall—

(1) adjourn sine die not later than July 31 of each year; or

(2) in the case of an odd-numbered year, provide, not later than July 31 of such year, by concurrent resolution adopted in each House by rollcall vote, for the adjournment of the two Houses from that Friday in August which occurs at least thirty days before the first Monday in September (Labor Day) of such year to the second day after Labor Day.

(b) This section shall not be applicable in any year if on July 31 of such year a state of war exists pursuant to a declaration of war by the Congress.

§ 1.4 The Senate, having passed by voice vote a concurrent resolution providing for an August adjournment, by unanimous consent reconsidered that action and the concurrent resolution was subsequently adopted by roll

call vote in both Houses in compliance with the statute.

In the first session of the 94th Congress, the Senate passed Senate Concurrent Resolution 54 by voice vote, ignoring the statutory rule⁽⁶⁾ requiring a roll call.

On July 22, 1975,⁽⁷⁾ the Senate remedied the omission by reconsidering its action.

MR. [MIKE] MANSFIELD [of Montana]: Mr. President, yesterday the Senate passed an adjournment resolution, Senate Concurrent Resolution 54. It was my intention at that time to ask for a rollcall vote. I forgot it. So I ask unanimous consent at this time that the matter be reconsidered.

THE ACTING PRESIDENT PRO TEMPORE:⁽⁸⁾ Without objection, it is so ordered.

MR. MANSFIELD: I ask for the yeas and nays.

THE ACTING PRESIDENT PRO TEMPORE: Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

MR. MANSFIELD: And that the vote occur at the hour of 12 o'clock noon.

THE ACTING PRESIDENT PRO TEMPORE: Without objection, it is so ordered. . . .

Under the previous order, the Senate will now vote on Senate Concurrent Resolution 54. On this question the yeas and nays have been ordered, and the clerk will call the roll.

6. See §.1.3, *supra*.

7. 121 CONG. REC. 24028, 24109, 94th Cong. 1st Sess.

8. Dale Bumpers (Ark.).

The legislative clerk called the roll.

MR. ROBERT C. BYRD [of West Virginia]: I announce that the Senator from Mississippi (Mr. Eastland), the Senator from Hawaii (Mr. Inouye), and the Senator from Rhode Island (Mr. Pell), are necessarily absent.

I also announce that the Senator from Michigan (Mr. Hart), is absent because of illness.

MR. [ROBERT P.] GRIFFIN [of Michigan]: I announce that the Senator from Oklahoma (Mr. Bartlett), is absent due to a death in the family.

On July 28, 1975,⁽⁹⁾ the House took action on the Senate concurrent resolution and followed the statutory mandate that the decision be reached by a yea and nay vote.

MR. [THOMAS P.] O'NEILL [Jr., of Massachusetts]: Mr. Speaker, I take this time to advise the House that the Speaker will lay before the House Senate Concurrent Resolution 54, providing for an adjournment of the two Houses from Friday, August 1, 1975, until Wednesday, September 3, 1975.

The Senate adopted this concurrent resolution on July 22 and under section 132 of the Legislative Reorganization Act of 1946, as amended, both Houses must vote by rollcall to adjourn for this period. Since under the precedents an adjournment resolution of this sort is not debatable, I have taken this time for the convenience of the Members to notify them of the forthcoming vote.

MR. [JOHN J.] RHODES [of Arizona]: Mr. Speaker, will the majority leader yield?

9. 121 CONG. REC. 25220, 94th Cong. 1st Sess.

MR. O'NEILL: I yield to the minority leader.

MR. RHODES: Mr. Speaker, I support the Senate concurrent resolution. . . .

The Speaker laid before the House the Senate concurrent resolution (S. Con. Res. 54) providing for a conditional adjournment of the Congress from August 1, 1975, until September 3, 1975.

The Clerk read the Senate concurrent resolution, as follows:

S. CON. RES. 54

Resolved by the Senate (the House of Representatives concurring), That when the two Houses adjourn on Friday, August 1, 1975, they stand adjourned until 12 o'clock noon on Wednesday, September 3, 1975, or until 12 o'clock noon on the second day after their respective Members are notified to reassemble in accordance with section 2 of this resolution, whichever event first occurs.

SEC. 2. The Speaker of the House of Representatives and the President pro tempore of the Senate shall notify the Members of the House and the Senate, respectively, to reassemble whenever in their opinion the public interest shall warrant it or whenever the majority leader of the House and the majority leader of the Senate, acting jointly, or the minority leader of the House and the minority leader of the Senate, acting jointly, file a written request with the Clerk of the House and the Secretary of the Senate that the Congress reassemble for the consideration of legislation.

SEC. 3. During the adjournment of both Houses of Congress as provided in section 1, the Secretary of the Senate and the Clerk of the House, respectively, be, and they hereby are, authorized to receive messages, including veto messages, from the President of the United States.

THE SPEAKER:⁽¹⁰⁾ Under the law, the vote on this Senate concurrent resolution must be taken by the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 293, nays 109, not voting 32, as follows: . . .

§ 1.5 The House laid on the table a resolution called up under a question of the privileges of the House declaring that a two-thirds vote was necessary to pass a joint resolution extending the ratification period for a constitutional amendment previously submitted to the states; and in response to a parliamentary inquiry on the vote required to pass a joint resolution extending the period for state ratification of a constitutional amendment, the Speaker stated that the House had determined that a majority vote was required, by laying on the table a (privileged) resolution asserting that a two-thirds vote was required.

Section 508, Jefferson's Manual, states "The voice of the majority decides; for the *lex majoris partis* is the law of all councils, elections, &c., where not otherwise expressly provided." A super-majority is

required in article V: "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution. . . ." Since 1917 Congress has, when proposing a constitutional amendment, provided in the joint resolution a time limit within which the requisite number of states must ratify; in four cases since that date the time limit has appeared in the text of the constitutional amendment, but since the 23d amendment has appeared independently in the proposing clause (with the apparent intent of not "cluttering" the Constitution with irrelevant past time limits). Early in the 95th Congress the Parliamentarian's office began receiving inquiries, principally from the Subcommittee on Civil and Constitutional Rights, as to the required vote on a joint resolution to extend the time limit for ratification of the Equal Rights Amendment (submitted to the states in March 1972), where the joint resolution referred to the joint resolution proposing the amendment but neither amended it nor the text of the constitutional amendment.

The report of the Committee on the Judiciary⁽¹¹⁾ stated that the joint resolution extending the ratification period could be adopted

10. Carl Albert (Okla.).

11. H. Rept. No. 95-1405.

by a majority vote, but the issue was one on which the House was clearly divided. On Aug. 15, 1978, Mr. James H. Quillen, of Tennessee, offered House Resolution 1315, as a question of privilege. The proceedings were as indicated.

MR. QUILLEN: Mr. Speaker, at the conclusion of my remarks I shall offer a resolution involving a question of the privileges of the House and ask for its immediate consideration.

Mr. Speaker, the "Resolved" clause of my resolution demands a two-thirds vote on final passage of the constitutional resolution extending the ERA. At the appropriate time I will offer my privileged resolution.

THE SPEAKER:⁽¹²⁾ The Chair will state to the gentleman from Tennessee (Mr. Quillen) that now is the time for the gentleman to offer his resolution.

MR. QUILLEN: Mr. Speaker, I rise to a question of the privileges of the House and offer a privileged resolution (H. Res. 1315) involving a question of the privileges of the House, and I ask for its immediate consideration.

THE SPEAKER: The Clerk will report the resolution.

First, the Chair will state that he has had an opportunity to examine the resolution as offered by the gentleman from Tennessee (Mr. Quillen), and in the opinion of the Chair the resolution presents a question of the privileges of the House and may be considered under rule IX of the rules of the House.

The Clerk will report the resolution.

12. Thomas P. O'Neill, Jr. (Mass.).

The Clerk read the resolution, as follows:

H. RES. 1315

Whereas H.J. Res. 638 of this Congress amends H.J. Res. 208 of the 92nd Congress, proposing an amendment to the Constitution;

Whereas H.J. Res. 208 of the 92nd Congress was passed by an affirmative vote of two-thirds of the Members present and voting, as required by Article V of the Constitution, and submitted for ratification on March 22, 1972;

Whereas the integrity of the process by which the House considers changes to H.J. Res. 208 of the 92nd Congress would be violated if H.J. Res. 638 were passed by a simple majority of the Members present and voting; and

Whereas the constitutional prerogatives of the House to propose amendments to the Constitution and to impose necessary conditions there-to in accordance with Article V of the Constitution would be abrogated if H.J. Res. 638 were passed by a simple majority of the Members present and voting;

Resolved, That an affirmative vote of two-thirds of the Members present and voting, a quorum being present, shall be required on final passage of H.J. Res. 638.

MR. [DON] EDWARDS of California: Mr. Speaker, I move to table the resolution.

THE SPEAKER: The question is on the motion offered by the gentleman from California (Mr. Edwards).

The question was taken; and the Speaker announced that the ayes appeared to have it.

MR. QUILLEN: Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 230, nays 183, not voting 19, as follows: . . .

So the motion to table was agreed to.

The result of the vote was announced as above recorded.

THE SPEAKER: The Chair recognizes the gentleman from California (Mr. Edwards) to offer a motion.

MR. [CHARLES E.] WIGGINS [of California]: Mr. Speaker, I have a parliamentary inquiry.

THE SPEAKER: The gentleman will state his parliamentary inquiry.

MR. WIGGINS: Mr. Speaker, upon the conclusion of our consideration of House Joint Resolution 638, including the adoption of any amendments to it, when the question is put on the final passage of that resolution, must the vote of the House to adopt the joint resolution be by a simple majority of those present and voting or by two-thirds of those present and voting?

THE SPEAKER: In response to the parliamentary inquiry raised by the gentleman from California, the Chair feels that the action of the House in laying on the table House Resolution 1315 was an indication by the House that a majority of the Members feel a majority vote is required for the final passage of House Joint Resolution 638. The Chair would cite the precedent contained in Cannon's VIII, section 2660, that affirmative action on a motion to lay on the table, while not a technical rejection, is in effect an adverse disposition equivalent to rejection.

The Chair, by ruling that House Resolution 1315 properly raised a question of the privileges of the House under rule IX, believed it essential that the question of the vote required to pass House Joint Resolution 638 be decided by the House itself. The House now

having laid that resolution on the table, the Chair feels that the result of such a vote, combined with the guidance on this question furnished by the Committee on the Judiciary on page 6 of its report, justifies the Chair in responding that, following the expression of the House, House Joint Resolution 638 will be messaged to the Senate if a majority of those present and voting, a quorum being present, vote for passage.

MR. WIGGINS: I have a further parliamentary inquiry, Mr. Speaker.

THE SPEAKER: The gentleman will state it.

MR. WIGGINS: Do I understand the ruling of the Chair correctly to be that a vote not to consider a privileged resolution is equivalent to a rejection of the text of the resolution itself?

THE SPEAKER: The vote was not on the question of consideration. The Chair will state that he believes he has answered the question raised in the gentleman's original inquiry. The Chair has stated that a motion to table is an adverse disposition.

MR. WIGGINS: Mr. Speaker, I understood the answer, then, to be "Yes"?

THE SPEAKER: The answer is "Yes."

§ 2. Stating and Putting the Question

Reaching a decision on a motion before the House or the Committee of the Whole involves several distinct steps. After debate has terminated, the Chair first *states the question*: "The question